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 3 Chula Vista, CA 91902

FILED

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIAJMB
DEPUTY

4 IN THE UNITED STATES DISTRICT COURT
 5 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

7 MARIA R. METCALF,)	
8 Plaintiff,)	CIVIL ACTION NO.
9 v.)	
10 DREXEL LENDING GROUP, a)	'08 CV 731 W POR
11 California corporation, OLD)	
12 REPUBLIC TITLE COMPANY, a)	
13 California corporation, AURORA)	
14 LOAN SERVICES LLC, a)	
15 California limited liability company)	
16 MORTGAGE ELECTRONIC)	
17 REGISTRATION SYSTEMS, INC.,)	
18 a Delaware corporation, and)	
19 ROBERT E. WEISS)	
20 INCORPORATED, a California)	
21 Corporation,)	
22 Defendants.)	VERIFIED COMPLAINT FOR DAMAGES
23)	AND PETITION FOR INJUNCTIVE RELIEF
24)	
25)	
26)	
27)	
28)	

20 Plaintiff, MARIA R. METCALF, sues Defendants DREXEL LENDING GROUP
 21 (hereinafter Defendant "DREXEL"), OLD REPUBLIC TITLE COMPANY (hereinafter
 22 Defendant "OLD REPUBLIC"), AURORA LOAN SERVICES, LLC (hereinafter Defendant
 23 "AURORA"), MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., (hereinafter
 24 Defendant "MERS"), and ROBERT E. WEISS INCORPORATED (hereinafter Defendant
 25 "Weiss") and as grounds therefore would state as follows:

UR

Parties

1.

Plaintiff, MARIA R. METCALF, (hereinafter referred to as "Plaintiff") is domiciled in the State of California, County of San Diego, City of Chula Vista, hereinafter Plaintiff.

2.

Defendant DREXEL, is a California corporation doing business in San Diego County, California. Defendant OLD REPUBLIC, is a California corporation doing business in San Diego County, California. Defendant AURORA is a California limited liability company doing business in San Diego County, California. Defendant MERS is a Delaware corporation doing business in San Diego County, California, Defendant WEISS is a California corporation doing business in San Diego County, California. All acts complained of occurred in San Diego County, California.

Jurisdiction and Venue

3

Jurisdiction arises under 15 USC section 1601 et seq., 15 USC section 1640, Title 12, Regulation Z, Part 226.1 (c)(3), Title 24 CFR, Regulation X, Part 3500, 12 USC section 2601, 12 USC section 3752, 28 USC 1367, and UCC Article 3 section 3-306. This Court has pendent jurisdiction over all state law claims.

General Background

4.

This is an action for rescission of an illegal and void Mortgage and Note to certain

1 real estate, for damages, and for injunctive relief. This purported mortgage and note and the
2 action taken by Defendants DREXEL, OLD REPUBLIC, MERS and WEISS contain unfair trade
3 practices and predatory lending practices and violates Federal and State law.
4

5.

6 Plaintiff seeks recovery for damages for non-disclosure of Plaintiff's right to cancel,
7 non-disclosure of certain Truth in Lending disclosures and Federal violations of numerous
8 consumer rights.
9

10 6.

11 On or about February 1, 2007, Plaintiff and Defendants DREXEL, OLD REPUBLIC
12 MERS and WEISS purported to execute a Mortgage and Note, purported loan number
13 0033798224. The said purported mortgage and note were never consummated by signing
14 therein. Defendant never during the duration of the purported loan transaction, within a
15 reasonable amount of time, ever gave the Plaintiff a signed copy of the purported mortgage and
16 note. Said Defendant never proved ownership of the Note either before, during or after the
17 purported default, foreclosure, sale and delivery of the Trustee's Deed to Defendant AURORA.
18

19 7.

20 Either before, during and/or after the settlement, Defendants DREXEL, OLD REPUBLIC, and
21 MERS and WEISS failed and/or refused to provide Plaintiff with copies of important documents,
22 including the complete mortgage and note which would explain their consumer rights, as well as
23 other rights, including but not limited to, the right to cancel the contract and the Federal Truth in
24 Lending Disclosures.
25

26 8.
27
28

1 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS also intentionally failed
2 and/or refused to provide Plaintiff various disclosures that would indicate to Plaintiff that the
3 contract entered into was void and illegal. For instance, Defendant failed to disclose that the loan
4 obtained had an interest rate higher than stated and in the preliminary disclosures, which
5 preliminary disclosures were never given.

6
7 9.
8

9 Defendant DREXEL, OLD REPUBLIC, MERS and WEISS attorney and/or settlement
10 agent did not furnish Plaintiff with copies of numerous important settlement documents, ever in
11 the loan's history.

12 10.
13

14 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS caused to be filed into the
15 records of the State of California documents which purported to be the mortgage or note
16 purported to be executed by Plaintiff.

17 11.
18

19 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS never during the duration
20 of the entire purported loan's history delivered upon the Plaintiff a Notice of Default and Right
21 to Cure, with the entire accounting to show where the charges allegedly owed were derived from.

22 12.
23

24 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS never during the duration
25 of the entire purported loan's history delivered upon Plaintiff an acceleration notice statement,
26 accelerating the purported loan. Further, said Defendants never followed the guidelines as set
27 forth by the Department of Housing and Urban Development (HUD) regarding advising
28

1 Plaintiff as to her right to seek a loan special forbearance, loan modification or other important
2 consumer rights prior to acceleration.
3

4 13.

5 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS herein and at all times material
6 hereto, were under legal obligation as fiduciaries and had the responsibility of overseeing the
7 purported loan consummation and to make sure that the Plaintiff received all mandated
8 documentation, before and after the purported consumer transaction.
9

10 14.

11 Defendant AURORA had actual/and or constructive notice of the forgoing claims of
12 Plaintiff prior to taking delivery of the purported Trustee's Deed and is not a bona fide purchaser
13 for value without notice as defined by 12 USC section 3752 (1).
14

15
16 **COUNT I (UNFAIR TRADE PRACTICES INVOLVING NON-COMPLIANCE WITH**
17 **15 USC SECTIONS 1601, ET. SEQ.)**

18 15.

19 The facts alleged above in paragraphs 1 through 14 are hereby realleged as though
20 fully set out and incorporated by reference herein.
21

22 16.

23 The mortgage documents were not given by Defendants DREXEL, OLD REPUBLIC
24 MERS, and WEISS after the settlement had taken place, and after Plaintiff had purported to sign
25 the documents.
26

27 17.
28

1 The above-mentioned constitutes a false representation of the settlement in violation of
2 the Real Estate Settlement Procedures Act (RESPA).
3
4

18.

5 As a direct, proximate, and foreseeable result of Defendant DREXEL, OLD REPUBLIC
6 MERS and WEISS actions, Plaintiff is subject to loss of the property and loss of the use of the
7 property and other damages as a result of Defendant DREXEL, OLD REPUBLIC, MERS and
8 WEISS actions.
9

10 **COUNT II (DISCLOSURE VIOLATION PURSUANT TO 15 USC**
11 **SECTION 1635 ET. SEQ.)**

12 19.

13 The facts alleged above in paragraphs 1 through 18 are hereby realleged as though
14 fully set out and incorporated by reference herein.
15

16 20.

17 The present case credit transaction is governed by the disclosure requirements of Title
18 15 USC Section 1635, including the extended right of rescission by virtue of being a refinancing
19 of obligations constituting a lien against Plaintiff's principal residence.
20

21 21.

22 The UCC 1 lien applies to the transaction under revised Article 9 and to Defendants
23 DREXEL, OLD REPUBLIC, MERS and WEISS because lien rights on the property arose in
24 favor of Defendants as a result of the transaction.
25

26 22.

27 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS failed and/or refused to
28 meet the disclosure requirements of Revised Article 9 of the UCC, by not providing the notice

1 required or filing it before, during or immediately after the settlement, as mandated under the
2 Article.

3 23.
4

5 Plaintiff is specifically in the class of person this statute was designed to protect.

6 24.
7

8 As a direct, proximate and foreseeable result of Defendant DREXEL, OLD REPUBLIC,
9 MERS and WEISS failure to provide proper notices, Plaintiff is subject to loss of property and
10 loss of use of property and other damages as a result of Defendants failure.

11 **COUNT III (MISSING STATEMENTS VIOLATION, PURSUANT TO 15 USC**
12 **SECTION 1635, ET. SEQ.)**

13 25.
14

15 The facts made above in paragraphs 1 through 24 are hereby realleged as though fully
16 set out and incorporated by reference herein.

17 26.
18

19 The two required statements under 15 USC Section 1639 (a) (1) (A) and (B) are
20 completely missing.

21 27.
22

23 Defendants also failed and/or refused to meet the disclosure requirements of Section
24 1635, by not providing the notice/disclosure or filing it before during or immediately after the
settlement, as required under this statute.

25 28.
26

27 Plaintiff is specifically in the class of persons this statute was designed to protect.

28 29.
29

1 As a direct, proximate, and foreseeable result of Plaintiff's failure to provide proper
2 notice, Plaintiff is subject to loss of property and loss of use of property and other damages as a
3 result of Defendant's failure.
4

5 **COUNT IV (MISSING DISCLOSURE STATEMENTS VIOLATION, PURSUANT TO 15**
6 **USC SECTION 1638, ET. SEQ.)**

7 30.

8 The facts alleged above in paragraphs 1 through 29 are hereby realleged as though
9 fully set forth and incorporated by reference herein.
10

11 31.

12 The required disclosure statements are completely missing under 15 USC Section
13 1638 (a) (2) (B) (a) (9), (a) (11) and (a) (12) and Regulation Z, Part 226.17 et. seq.
14

15 32.

16 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS failed and/or refused to
17 meet the disclosure requirements of Section 1638(a)(2)(B)(a)(9),(a)(11) and (a)(12) and
18 Regulation Z, Part 226.17 et. seq.

19 33.

20 Plaintiff is specifically in the class of persons this statute was designed to protect.
21

22 34.

23 As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC
24 MERS and WEISS failure to provide proper notice/disclosure, Plaintiff is subject to loss of
25 property and loss of use of property and other damages as a result of Defendants failure.
26

27 **COUNT V (DISCLOSURE VIOLATIONS, PURSUANT TO TITLE 12 CODE OF**
28 **FEDERAL REGULATIONS SECTION 226, ET. SEQ.)**

1 35.

2 The facts alleged above in paragraphs 1 through 34 are hereby realleged as though
3 fully set out and incorporated by reference herein.
4

5 36.

6 The Federal Reserve Board Interpretation, Title 12 Code of Federal Regulations Part
7 226, Supplement 1, Paragraph 23(a) (1), provides that in the present case the transaction is
8 rescindable for reasons above and below stated.
9

10 37.

11 The disclosures made in relation to the consumer credit transaction were not
12 presented in the manner required by law. Furthermore, the disclosures were not grouped together
13 and were not segregated from everything else as required by Title 12 Code of Federal
14 Regulations, Section 226.17(a) (1) and in this case were not given at all.
15

16 38.

17 Plaintiff is specifically in the class of persons this statute was designed to protect.
18

19 39.

20 As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC,
21 MERS and WEISS failure to provide proper notice/disclosure, Plaintiff is subject to loss of
22 property and loss of use of property and other damages as a result of Defendants failure.
23

24 **COUNT VI (RIGHT TO RECIND VIOLATIONS, PURSUANT TO TITLE 12 CODE OF
FEDERAL REGULATIONS SECTION 226, ET. SEQ.)**

25 40.

26 38. The facts alleged above in paragraphs 1 through 39 are hereby realleged as though
27 fully set our and incorporated by reference herein.
28

1 41.

2 The right to rescind or cancel settlement document was unsigned by both parties,
3
4 was not disclosed or given, as required by Title 12 Code of Federal Regulations Section 226.18
5 et seq.
6

7 42.

8 Plaintiff is specifically in the class of persons this statute was designed to protect.
9
10 As a direct, proximate and foreseeable result of Plaintiff's failure to provide proper
11 notice/disclosure, Plaintiff is subject to loss of property and loss of use of property and other
12 damages as a result of Defendants failure.

13 **COUNT VII (RIGHT TO CANCEL VIOLATIONS, PURSUANT TO TITLE 12 CODE
14 OF FEDERAL REGULATIONS SECTION 226, ET. SEQ.)**

15 43.

16 The facts alleged above in paragraphs 1 through 42 are hereby realleged as though
17 fully set forth and incorporated by reference herein.

18 44.

19 There was no separate form to cancel, as required by Title 12 Code of Federal
20 Regulation, Section 226 et. seq.

21 45.

22 Plaintiff is specifically in the class of persons this statute was designed to protect.

23 46.

24 As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC,
25 MERS and WEISS failure to provide proper notice/disclosure, Plaintiff is subject to loss of
26 property and loss of use of property and other damages as a result of Defendants failure.

**COUNT VIII (DECEPTIVE GROUPING VIOLATIONS, PURSUANT TO TITLE 12
CODE OF FEDERAL REGULATIONS SECTION 226, ET., SEQ.)**

47.

The facts made above in paragraphs 1 through 46 are hereby realleged as though fully set forth and incorporated by reference herein.

48.

The interest disclosures were not given together with other information within the documents.

49.

Plaintiff is specifically in the class of persons this statute was designed to protect.

50.

As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC MERS and WEISS failure to provide proper notice/disclosure, Plaintiff is subject to loss of property and loss of use of property and other damages as a result of Defendants failure.

**COUNT IX (GOOD FAITH ESTIMATE VIOLATIONS, PURSUANT TO TITLE 12
CODE OF FEDERAL REGULATIONS SECTION 226, ET. SEQ.)**

51.

The facts alleged above in paragraphs 1 through 50 are hereby realleged as though fully set forth and incorporated by reference herein.

52.

A good faith estimate copy was not received by Plaintiff, as required by 12 Code of Federal Regulation, Section 226.18(c) and 12 USC Section 2601 et seq.

53.

1 Plaintiff is specifically in the class of persons this statute was designed to protect.
2
3

54.

4 As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC,
5 MERS and WEISS failure to provide proper notice/disclosure, Plaintiff is subject to loss of
6 property and loss of use of property and other damages as a result of Defendants failure.

7 **COUNT X (CONSUMER STATEMENT MISSING VIOLATIONS, PURSUANT TO**
8 **TITLE 12 CODE OF FEDERAL REGULATIONS SECTION 226, ET. SEQ.)**

9
10 55.

11 The facts made above in paragraphs 1 through 54 are hereby realleged as though fully
12 set out and incorporated by reference herein.

13
14 56.

15 A statement that the consumer should refer to the appropriate contract document and
16 clause for information about nonpayment, default, the right to accelerate was not given, as
17 required by Title 12 Code of Federal Regulation, Section 226.18(p).

18
19 57.

20 Plaintiff is specifically in the class of persons this statute was designed to protect.
21

22
23 58.

24 As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC,
25 MERS and WEISS failure to provide proper notice/disclosure, Plaintiff is subject to loss of
26 property and loss of use of property and other damages as a result of Defendants failure.

27 **COUNT XI (DISCLOSURE VIOLATIONS, PURSUANT TO TITLE 15 USC SECTION**
28 **1601, ET. SEQ. AND REGULATION Z).**

29
30 59.

The facts made above in paragraphs 1 through 58 are hereby realleged as though fully set out and incorporated by reference herein.

60.

Since this action was commenced, Defendants DREXEL, OLD REPUBLIC, MERS and WEISS have continued and so continues to violate the Consumer Credit Protection Act, Title 15 United States Code, Section 1601 et seq., and Regulation Z, Title 12 Code of Federal Regulations, Part 226, which was adopted pursuant to such Act, by failing to properly make the disclosures required by the Act and Regulation Z, as herein after more particularly set forth.

61.

Plaintiff is specifically in the class of persons this statute was designed to protect.

62

As a direct, proximate, and foreseeable result of Defendants DREXEL, OLD REPUBLIC MERS and WEISS failure to provide proper notice, Plaintiff is subject to loss of property and loss of use of property and other damages as a result of Defendants failure.

**COUNT XII (FAILURE TO DISCLOSE CALCULATION OF MORTGAGE BALANCE,
PURSUANT TO TITLE 12 CFR SECTION 226.4, ET. SEQ.)**

63.

The facts and allegations above in paragraphs 1 through 62 are hereby realleged as though fully set forth and incorporated by reference herein.

64.

Defendants DREXEL, OLD REPUBLIC, MERS and WEISS failed to disclose in or with the disclosure statements, because no disclosure statements were given, the amount of the balance to which the rate was applied and an explanation of how that balance was determined

1 and further failed to disclose the fact that the balance is determined without first deducting all
2 credits and payments made as required by Title 12 Code of Federal Regulations, Section 226.4
3 et seq.
4

5 65.

6 Plaintiff is specifically in the class of persons this statute was designed to protect.
7

8 66.

9 As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC,
10 MERS and WEISS failure to provide proper acceleration notice, Plaintiff is subject to loss of
11 property and loss of use of property and other damages as a result of Defendants failure.
12

13 **COUNT XIII (FAILURE TO DISCLOSE ITEMIZATION OF CHARGES,**
14 **PURSUANT TO TITLE 12 USC SECTION 2610 ET. SEQ.)**

15 67.

16 The facts alleged above in paragraphs 1 through 66 are hereby realleged as though
17 fully set forth and incorporated by reference herein.
18

68.

19 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS failed to disclose in or with
20 the acceleration statement the amounts, itemized and identified by type, of charges other than
21 finance charges debited to the account during the acceleration period as required by Title 12
22 Code of Federal Regulations, Section 226.21.
23

69.

25 Plaintiff is specifically in the class of persons this statute was designed to protect.
26

27 70.
28

1 As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC, MERS
2 and WEISS failure to provide proper notice, Plaintiff is subject to loss of property and loss of
3 use of property and other damages as a result of Defendants failure.
4

5 **COUNT XIV (INFLATION OF ACCELERATION FEES, IN VIOLATION OF TITLE**
6 **12 USC SECTION 2610, ET. SEQ.)**

7 71.

8 The facts alleged above in paragraphs 1 through 70 are hereby realleged as though
9 fully set forth and incorporated by reference herein.
10

11 72.

12 Defendants inflated the acceleration fees without operation of law, which amounts
13 to usurious interest, in violation of Banking Law at 12 USC Section 2610 et seq.
14

15 73.

16 Plaintiff is specifically in the class of persons this statute was designed to protect.
17

18 74.

19 As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC
20 MERS and WEISS failure to provide proper notice, Plaintiff is subject to loss of property and
21 loss of use of property and other damages as a result of Defendants failure.
22

23 **COUNT XV (FAILURE TO DISCLOSE DATE, IN VIOLATION OF TITLE 12 USC**
24 **SECTION 2610, ET. SEQ.)**

25 75.

26 The facts alleged above in paragraphs 1 through 74 are hereby realleged as though
27 fully set forth and incorporated by reference herein.
28

76.

1 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS failed to disclose the date
2 by which or the time period within which the new balance or any portion of the new balance
3 must be paid to avoid additional finance charges as required by Title 12 Code of Federal
4 Regulations, Section 226.18(p).
5

6 77.

7 Plaintiff is specifically in the class of persons this statute was designed to protect.
8

9 78.

10 As a direct, proximate and foreseeable result of Defendants failure to provide proper
11 notice, Plaintiff is subject to loss of property and loss of use of property and other damages as
12 a result of Defendants failure.

13 **COUNT XVI (FAILURE TO PROVIDE COPIES OF MORTGAGE, IN VIOLATION
14
15 OF 15 USC SECTION 1601, ET. SEQ.)**

16 79.

17 The facts alleged above in paragraphs 1 through 78 are hereby realleged as though
18 fully set forth and incorporated by reference herein.

19 80.

20 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS failed to give to Plaintiff
21 signed copies of the complete mortgage as required by 15 USC Section 1601 et seq. within a
22 reasonable amount of time or never during the entire period of the Loan Agreement.
23

24 81.

25 Plaintiff is specifically in the class of persons this statute was designed to protect.
26

27 82.

28 As a direct, proximate and foreseeable result of Defendants failure to provide proper

1 notice, Plaintiff is subject to loss of property and loss of use of property and other damages as a
2 result of Defendants failure.

3 **COUNT XVII (FAILURE TO OBTAIN SIGNED LOAN DOCUMENTS, IN VIOLATION**
4 **OF 15 USC SECTION 1601, ET. SEQ., AND TITLE 12, REGULATION Z, PART 226**
5 **ET. SEQ.)**

6 83.

7 The facts alleged above in paragraphs 1 through 82 are hereby realleged as though
8 fully set forth and incorporated by reference herein.
9

10 84.

11 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS failed to give the required
12 sentences in various loan documents and have them signed by the Plaintiff, as required by 15
13 USC Section 1601 et seq. and Title 12, Regulation Z, Part 226 et seq.
14

15 85.

16 Plaintiff is specifically in the class of persons this statute was designed to protect.
17

18 86.

19 As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC
20 MERS and WEISS failure to provide proper notice, Plaintiff is subject to loss of property and
21 loss of use of property and other damages as a result of Defendants failure.
22

23 **COUNT XVIII (FAILURE TO DISCLOSE USE OF SETTLEMENT FEES IN**
24 **VIOLATION OF TITLE 12, REGULATION Z AND 15 USC SECTION 1601, ET. SEQ.).**

25 87.

26 The facts made above in paragraphs 1 through 86 are hereby realleged as though fully
27 set forth and incorporated by reference herein.
28

1 88.

2 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS failed to disclose to the
3 Plaintiff that the settlement fees could not be a part of the amount financed as required by Title
4 12, Regulation Z and 15 USC Section 1601 et seq.
5

6 89.

7 Plaintiff is specifically in the class of persons this statute was designed to protect.
8

9 90.

10 As a direct, proximate, and foreseeable result of Defendants DREXEL, OLD
11 REPUBLIC, MERS and WEISS failure to provide proper notice, Plaintiff is subject to loss of
12 property and loss of use of property and other damages as a result of Defendants failure.
13

**COUNT XIX (FAILURE TO DISCLOSE LOWER INTEREST RATE, IN VIOLATION
OF 12 USC SECTION 2601, ET SEQ.)**

14 91.

15 The facts alleged above in paragraphs 1 through 90 are hereby realleged as though fully
16 set forth and incorporated by reference herein.
17

18 92.

19 Defendant failed to disclose to Plaintiff that the loan obtained has an interest rate higher
20 than the rate reflected in the Preliminary Disclosures and do not fall within the tolerances as
21 required by 12 USC Section 2601 et seq.
22

23 93.

24 Plaintiff is specifically in the class of persons this statute was designed to protect.
25

26 94.

1 As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC
2 MERS and WEISS failure to provide proper notice, Plaintiff is subject to loss of property and
3 loss of use of property and other damages as a result of Defendants failure.
4

5 **COUNT XX (FAILURE TO DISCLOSE LOAN ORIGINATION FEE, IN VIOLATION
6 OF 12 USC SECTION 2601, ET. SEQ).**

7 95.

8 The facts made above in paragraphs 1 through 94 are hereby realleged as though fully set
9 forth and incorporated by reference herein.
10

11 96.

12 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS failed to disclose to
13 Plaintiff that the loan obtained required loan origination fees, whereas the Preliminary
14 Disclosures reflected no such fees as required by 12 USC Section 1601 et seq.
15

16 97.

17 Plaintiff is specifically in the class of persons this statute was designed to protect.
18

19 98.

20 As a direct and proximate and foreseeable result of Defendants DREXEL, OLD
21 REPUBLIC, MERS and WEISS failure to provide proper notice, Plaintiff is subject to loss of
22 property, loss of use of property and other damages as a result of Defendants failure.
23

24 **COUNT XXI (FAILURE TO GIVE 3 DAY COOLING PERIOD, IN VIOLATION OF
25 15 USC SECTION 1601, ET. SEQ. AND REGULATION Z)**

26 99.

27 The facts alleged above in paragraphs 1 through 98 are hereby realleged as though fully
28 set forth and incorporated by reference herein.
29

1 100.

2 Defendants DREXEL, OLD REPUBLIC, MERS and WEISS failed to give Plaintiff the
3 required 3 day cooling off period, as required by Regulation Z and 15 USC Section 1601 et seq.
4

5 101.

6 Plaintiff is specifically in the class of persons this statute was designed to protect.
7

8 102.

9 As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC
10 MERS and WEISS failure to provide proper disclosure, Plaintiff is subject to loss of property
11 and loss of use of property and other damages as a result of Defendants failure.

12 **COUNT XXII (FAILURE TO GIVE CONSPICUOUS WRITINGS, IN VIOLATION OF**
13 **15 USC SECTION 1601, ET SEQ, AND TITLE 12 CODE OF FEDERAL**
14 **REGULATIONS, SECTION 226.18)**

15 103.

16 The facts alleged above in paragraphs 1 through 102 are hereby realleged as though fully
17 set forth and incorporated by reference herein.

18 104.

19 By reason of the foregoing, Defendants DREXEL, OLD REPUBLIC, MERS and WEISS
20 have failed to make the disclosures required by 15 USC Section 1601 et seq. and Title 12 Code
21 of Federal Regulations, Section 226.18, clearly and conspicuously in writing, in a form that
22 Plaintiffs could keep as required by 15 USC section 1601 et seq. and Title 12, Code of Federal
23 Regulations, Section 226.18. As a proximate result of the foregoing, the Plaintiff herein has the
24 right to rescind the entire transaction.
25
26
27
28

105.

Plaintiff is specifically in the class of persons this statute was designed to protect.

106.

As a direct, proximate, and foreseeable result of Defendants DREXEL, OLD
REPUBLIC, MERS and WEISS failure to provide proper notice, Plaintiff is subject to loss of
property and loss of use of property and other damages as a result of Defendants failure.

**COUNT XXIII (FAILURE TO GIVE PROPER NOTICE OF DEFAULT AND RIGHT
TO CURE AND ACCELERATION NOTICE, IN VIOLATION OF 12 USC 2601
ET SEQ, 15 USC SECTION 1601, ET SEQ. AND TITLE 12 CODE OF
FEDERAL REGULATIONS, SECTION 226.18)**

107.

The facts alleged above in paragraphs 1 through 106 are hereby realleged as though
fully set forth and incorporated by reference herein.

108.

Defendants DREXEL, OLD REPUBLIC, MERS and WEISS have further failed to give
proper notice of Notice of Default and Right to Cure and acceleration of the loan transaction as
required by 12 USC Section 2601 et seq. and 15 USC Section 1601 et seq.

109.

Plaintiff is specifically in the class of persons this statute was designed to protect.

110.

As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC
MERS and WEISS failure to provide proper notice, Plaintiff is subject to loss of property and
loss of use of property and other damages as a result of Defendants failure.

**COUNT XXIV (VIOLATION FAILURE TO DISCLOSE INTEREST RATE PURSUANT
TO REGULATION Z, PART 226.4)**

111.

The facts alleged above in paragraphs 1 through 110 are hereby realleged as though fully set forth and incorporated by reference herein.

112.

Defendants DREXEL, OLD REPUBLIC, MERS and WEISS failed to disclose beginning interest rates and the adjustable rate rider.

113.

Plaintiff is specifically in the class of person this statute was designed to protect.

114.

As a direct, proximate and foreseeable result of Defendants DREXEL, OLD REPUBLIC, MERS and WEISS failure to provide proper notice Plaintiff is subject to loss of property and loss of use of property and other damages as a result of Defendants failure.

COUNT XXV (INJUNCTIVE RELIEF)

115.

The facts alleged above in paragraphs 1 through 114 are hereby realleged as though fully set forth and incorporated herein.

116.

Plaintiff has been and will be seriously injured unless Defendants DREXEL, OLD REPUBLIC, MERS and WEISS foreclosure and post-foreclosure activities complained of are preliminarily and permanently enjoined. Plaintiff will suffer irreparable injury of a continuing nature that cannot be adequately calculated or compensated in money damages.

117.

Plaintiff seeks an injunction to enjoin Defendants DREXEL, OLD REPUBLIC, MERS and WEISS from keeping relevant documents such as, complete loan package but not limited to forwarding all relevant foreclosure documents to Plaintiff, and further enjoined from continued prosecution of eviction, detainer, ejectment or any other action against Plaintiff by any one and or all Defendants.

Prayer for Relief

Plaintiff prays for the following relief:

118.

Rescission of the entire Mortgage and note amounting to clear title to property with Fixtures as a result of the aforementioned, and

119.

As a result of Defendant's aforesaid violation, Defendants are liable to Plaintiff in an Amount not less than \$200.00 and up to \$2,000.00 for each and every violation, and

120.

Damages as a result of the aforementioned violations, to be fixed and awarded by the Court, including the alleged mortgage amount of \$900,000.00., and

121.

Damages for the Unfair and Deceptive Acts and Practices in the amount of \$4,000.00 for each and every violation, and

122.

Damages in the amount of three times the interest paid and clear title to the property stemming from the usurious interest, and

1 123.

2 Judgment against Defendant for return of the down payment, and other payments, as well
 3 as interest on the above amount, and
 4

5 124.

6 Cost of litigation as provided in Title 15 United States Code, Section 1601, et seq., and
 7

8 125.

9 Such other and further relief as the court deems equitable, appropriate and just.
 10

Dated this 22nd, day of April, 2008.

12 VERIFICATION

13 BEFORE ME the undersigned authority duly authorized to administer oaths, personally
 14 appeared Maria R. Metcalf, who after being duly sworn, deposes and says that the
 15 foregoing facts and allegations are true and correct.
 16

17 I certify under penalty of perjury under the laws of the State of California that the foregoing
 18 paragraph is true and correct.

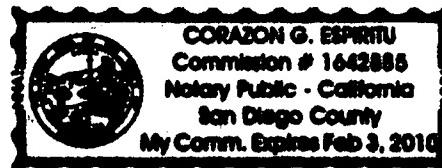
19 WITNESS my hand and official seal.



20 21 22 Maria R. Metcalf, Affiant/Plaintiff

23 24 25 Signature of Notary Public

26 27 My Commission Expires: Feb 03, 2010



1
2 **CERTIFICATE OF SERVICE**
3

4 I, Maria R. Metcalf hereby certify that the foregoing Complaint for Damages and for
5

6 Injunctive relief was served by U.S. Mail with adequate postage there upon the Defendant
7

8 DREXEL LENDING GROUP at 8200 Haven Avenue, Suite 2109, Rancho Cucamonga, CA
9

10 91730, upon Defendant OLD REPUBLIC TITLE COMPANY at 9645 Granite Ridge Drive,
11

12 Suite 300 San Diego CA 92123, upon Defendant MERS at PO Box 2026, Flint MI 48501, upon
13

14 Defendant ROBERT E. WEISS INCORPORATED at 920 South Village Oaks Drive, Covina, CA
15

16 91724 and upon Defendant AURORA LOAN SERVICES LLC by serving JAMES T. LEE, ESQ
17

18 attorney for Defendant AURORA at Law Offices of Robert E. Weiss Incorporated at 920 South
19

20 Village Oaks Drive, Covina, CA 91724.
21
22

23 **MARIA R. METCALF**
24 Plaintiff, pro-se
25 954 Surrey Drive
26 Chula Vista, CA 91902
27 Phone (619) 399-1066

28 
 Maria R. Metcalf

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

150103 - MS

**April 22, 2008
16:31:13**

Civ Fil Non-Pris
USAO #: 08-CV-0731-W CIVIL FILING
Judge.: THOMAS J WHELAN
Amount.: \$350.00 CA

Total-> \$350.00

FROM: METCAF VS. DREXTEL LENDING GP
CIVIL FILING

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Maria R. Metcalf, pro se

San Diego

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Maria R. Metcalf, pro-se

954 Survey Dr.
BONITA CA
91902-

(619) 399-1066

DEFENDANTSDrexel Lending Group, Old
Republic Title Company, Aurora Loan-Services LLC,
Mortgage Electronic Registration Systems, Inc., Robert Weiss

County of Residence of First Listed Defendant

08 APR 22 SAN BERNARDINO O

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'08 CV 731 DEPUTY W POR

James T. Lee for Aurora Loan Svcs.

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

 3 Federal Question
(U.S. Government Not a Party)

 1 U.S. Government Plaintiff

 2 U.S. Government Defendant

 4 Diversity
(Indicate Citizenship of Parties in Item III)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

PTF

Incorporated or Principal Place
of Business In This State

Citizen of Another State

PTD

Incorporated and Principal Place
of Business In Another StateCitizen or Subject of a
Foreign Country

PTD

Foreign Nation

4

5

6

5

6

IV. NATURE OF SUIT (Place an "X" in One Box Only)**CONTRACT****TORTS****FORFEITURE/PENALTY****BANKRUPTCY****OTHER STATUTES**

- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment & Enforcement of Judgment
- 151 Medicare Act
- 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholders' Suits
- 190 Other Contract
- 195 Contract Product Liability
- 196 Franchise

- | | |
|-------------------------------------|--|
| PERSONAL INJURY | PERSONAL PROPERTY |
| 310 Airplane | 362 Personal Injury - Med. Malpractice Liability |
| 315 Airplane Product Liability | 365 Personal Injury - Product Liability |
| 320 Assault, Libel & Slander | 368 Asbestos Personal Injury Product Liability |
| 330 Federal Employers' Liability | 370 Other Fraud |
| 340 Marine | X 371 Truth in Lending |
| 345 Marine Product Liability | 380 Other Personal Property Damage |
| 350 Motor Vehicle | 385 Property Damage |
| 355 Motor Vehicle Product Liability | 360 Other Personal Product Liability |

- 410 Agriculture
- 620 Other Food & Drug
- 625 Drug Related Seizure of Property 21 USC 881
- 630 Liquor Laws
- 640 R.R. & Truck
- 650 Airline Regs.
- 660 Occupational Safety/Health
- 690 Other

PROPERTY RIGHTS

- 820 Copyrights
- 830 Patent
- 840 Trademark

LABOR

- 710 Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- 730 Labor/Mgmt. Reporting & Disclosure Act
- 740 Railway Labor Act
- 790 Other Labor Litigation
- 791 Empl. Ret. Inc. Security Act

SOCIAL SECURITY

- 861 HIA (1395ff)
- 862 Black Lung (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID Title XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS

- 870 Taxes (U.S. Plaintiff or Defendant)
- 871 IRS—Third Party
- 26 USC 7609

IMMIGRATION

- 462 Naturalization Application
- 463 Habeas Corpus - Alien Detainee
- 465 Other Immigration Actions

400 State Reapportionment

- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce
- 460 Deportation

- 470 Racketeer Influenced and Corrupt Organizations
- 480 Consumer Credit
- 490 Cable/Sat TV
- 810 Selective Service

- 850 Securities/Commodities/ Exchange
- 875 Customer Challenge
- 12 USC 3410
- 890 Other Statutory Actions

- 891 Agricultural Acts
- 892 Economic Stabilization Act
- 893 Environmental Matters
- 894 Energy Allocation Act

- 895 Freedom of Information Act
- 900 Appeal of Fee Determination Under Equal Access to Justice
- 950 Constitutionality of State Statutes

REAL PROPERTY**CIVIL RIGHTS****PRISONER PETITIONS**

- 210 Land Condemnation
- 220 Foreclosure
- 230 Rent Lease & Ejectment
- 240 Torts to Land
- 245 Tort Product Liability
- 290 All Other Real Property

- 441 Voting
- 442 Employment
- 443 Housing/ Accommodations
- 444 Welfare
- 445 Amer. w/Disabilities - Employment
- 446 Amer. w/Disabilities - Other
- 440 Other Civil Rights

- 510 Motions to Vacate Sentence
- Habeas Corpus:
- 530 General
- 535 Death Penalty
- 540 Mandamus & Other
- 550 Civil Rights
- 555 Prison Condition

V. ORIGIN

(Place an "X" in One Box Only)

 Original Proceeding

 2 Removed from State Court

 3 Remanded from Appellate Court

 4 Reinstated or Reopened

 5 Transferred from another district (specify)

 6 Multidistrict Litigation

 7 Appeal to District Judge from Magistrate Judgment
VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity) 15USC1601:

15 USC SEC 1601 ET SEQ

Brief description of cause Complaint for damages for violation of Truth in Lending and for rescission and injunctive relief:

COMPLAINT FOR DAMAGES, PETITION FOR INJUNCTIVE RELIEF

VII. REQUESTED IN COMPLAINT:CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$900,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/22/08

Marcia R. Metcalf

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